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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/821,708

03/28/2001

Shawn P. McAllister

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06/09/2009

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EXAMINER

HAN, CLEMENCE S

ART UNIT

PAPER NUMBER

2416

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/821,708	Applicant(s) MCALLISTER ET AL.	
	Examiner CLEMENCE HAN	Art Unit 2416	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-9,12-15,18-26,28-31,34-40 and 42-44.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Ricky Ngo/
 Supervisory Patent Examiner, Art Unit 2416

/C. H./
 Examiner, Art Unit 2416

Continuation of 11. does NOT place the application in condition for allowance because: In response to page 9, the applicant merely stated that the applicant disagrees with the examiner's objections without any further reasoning. For example, regarding claim 1, the applicant states the examiner's objection and notes "a selected characteristic" is already recited. The examiner agrees that "a selected characteristic" is already stated in claim 1 line 4. However, it is still not clear whether "a new connection selected characteristic of the new connection" in line 11 is the same as "a selected characteristic of the new connection" or not. For the similar reason, claim 23 is still objected because it is still not clear whether "a second connection status of the second connection selected characteristic" in line 13 is the same as "a status of the second connection's selected characteristic" or not and claim 36 is still objected because it is still not clear whether "at least one new connection characteristic of the new connection" is the same as "at least one characteristic of the new connection" or not. In response to page 10-21, the applicant repeated basically same arguments for each claims. The arguments repeated are "such teaching teaches away from the features of claim. Accordingly, it would not have been obvious to one of ordinary skill in the art to combine the alleged teachings of cited references and, even if an attempt were made to combine such alleged teachings, such attempt would not yield the subject matter of claim." However, the examiner could not find any basis for such statements. Srinivasan teaches monitoring and rerouting (Column 17 Line 22-23) and Cedrone teaches evaluating new connection (step 408 in Figure 4) before rerouting (step 410 in Figure 4). It would have been obvious to one skilled in the art to modify Srinivasan to check out new connection as taught by Cedrone in order to make sure the new connection is working order before rerouting (Column 8 line 39-47). In response to page 14, the applicant argues that the examiner did not provide any reference disclosing MPLS, LDP or RSVP and LSP. All of those protocols are well known in the art at the time of invention and rerouting under those protocols are also well known at the time of invention. For example, see Gan et al. (US Pub. 2009/0040921), Owens et al. (US Pub. 2008/0095045) and Furman et al. (US Pub. 2002/0141342).